

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LINDA MELLEN,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 04-10644-MEL
)	
TRUSTEES OF BOSTON UNIVERSITY)	
AND FRANCES A. DROLETTE,)	
)	
Defendants.)	
)	

DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR SANCTIONS

Trustees of Boston University and Frances A. Drolette (collectively "Defendants") respectfully oppose Plaintiff's Cross-Motion for Sanctions (Docket No. 55) concerning Defendants' Motion To Quash (Docket Nos. 50-53). Defendants corrected their mistaken assertion that Plaintiff did not quote from her document requests in her Opposition (Docket No. 51) by letter dated October 2, 2006 (Docket No. 54). That mistaken assertion, however, did not relate to the substance of the underlying motion. The remaining charges that Defendants' submissions are "misleading" are simply critiques of the arguments Defendants chose to make.

Further, there is a legitimate dispute between the parties as to whether discovery should be reopened to permit the third-party discovery sought by the subpoena. Costs should not be awarded where the party's position is a "substantially justified," Fed. R. Civ. P. 37(a)(4)(A), a standard that is satisfied where there is a "genuine dispute." *Notice v. DuBois*, 187 F.R.D. 19, 20 (D. Mass. 1999) (*quoting* Advisory Cmte Notes on 1970

Amendments). *See also Pierce v. Underwood*, 487 U.S. 552, 565 (1988) (explaining that “substantially justified” does not mean “justified to a high degree,” but rather “justified to a degree that could satisfy a reasonable person”). As detailed in the Defendants’ filings, there is a legitimate dispute about the propriety of the discovery Plaintiff seeks.

Defendants are available for hearing should the Court determine that it would be helpful to hear further from the parties on these issues.

CONCLUSION

WHEREFORE, Defendants respectfully request that Plaintiff’s motion for sanctions be denied.

TRUSTEES OF BOSTON UNIVERSITY
AND FRANCES A. DROLETTE

By their attorneys,

/s/
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